

Osage v. U.S., Case No. 99-550 L (Fed. Cl., Apr. 30, 2010)

Before the court is an action brought by the Osage Tribe of Indians of Oklahoma (Tribe or plaintiff) seeking damages from the United States (government or defendant) for the Bureau of Indian Affairs Osage Agency's (Osage Agency's) alleged failure to collect and invest revenues generated from the Osage mineral estate in breach of the government's fiduciary duties as trustee. Plaintiff Osage Nation's Amended Motion for Summary Judgment on All Oil-Royalty Under-Collection Claims for July 1974 to December 2000 and All Deposit-Lag, Excessive-Cash-Balance, and Investment-Yield Claims for Accounts 7386 and 7886 for United States Fiscal Years 1973 to 1992 (plaintiff's Motion or Pl.'s Mot.), 2, Docket Number (Dkt. No.) 407.

I. Background

This matter has been before the court since August 2, 1999. Detailed discussions of the history of the dispute, the procedural history and the outcome of prior proceedings are contained in the court's prior opinions. The court provides a brief summary here.

In March 2005, the court divided plaintiff's claims into two tranches: Tranche One encompasses the Tribe's trust fund mismanagement claims within the parameters established by the United States Court of Appeals for the Federal Circuit in *Shoshone Indian Tribe of the Wind River Reservation v. United States (Shoshone)*, 364 F.3d 1339, 1350-51 (Fed. Cir. 2004), and Tranche Two covers all other claims. Order of Apr. 15, 2005, Dkt. No. 194 (filed in *The Osage Nation and/or Tribe of Indians of Okla. v. United States*, Case No. 00-169L, prior to case consolidation); *Osage Tribe of Indians of Okla. v. United States (Osage II)*, 72 Fed. Cl. 629, 631 (2006).

On October 27, 2005, in response to the government's motion to dismiss in part the Tribe's suit, the court issued the opinion underpinning this entire action: as a matter of law, the Tribe is entitled to damages for the government's breach of its fiduciary duties. In *Osage Tribe of Indians of Oklahoma v. United States (Osage I)*, 68 Fed. Cl. 322 (2005), the court held that legislation passed in 1906 pertaining to administration of the lands given to the Tribe, Act of June 28, 1906, ch. 3572, 34 Stat. 539 (1906 Act) (providing for the division of the lands and funds of the Osage Indians in Oklahoma Territory), imposed upon the United States a specific fiduciary duty to hold in trust the moneys contractually owed to the Tribe pursuant to oil and gas leases, including the duty to verify that proper royalties were paid to the Tribe under the terms of those leases. *Osage I*, 68 Fed. Cl. at 327. The court declined to determine the standard to which the government should be held in carrying out its duty to invest the Tribe's royalties pursuant to the 1906 Act, reserving that issue for further briefing and trial. *Id.* at 335-36.